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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,778	06/28/2001	Tongtong Wang	210121.455C16	1354

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EXAMINER	
CHEN, SHIN LIN	
ART UNIT	**PAPER NUMBER**
1632	

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/897,778	WANG ET AL.	
	Examiner	Art Unit	
	Shin-Lin Chen	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *20-23*.

   Claim(s) withdrawn from consideration: *1, 3-6, 9-11 and 15-19*.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Shin-Lin Chen
Primary Examiner
Art Unit: 1632

Continuation of 5. does NOT place the application in condition for allowance because: Applicants amended claim 20 to recite "and wherein said polypeptide is useful for the detection of lung cancer" and argue that Chen does not teach using the claimed polypeptide to stimulate T cells, for use in detecting lung cancer, and to use an adjuvant that induces a predominatly Th1-type response (amendment, p 8). This is not found persuasive because of the reasons of record and that claims 20-23 are product claims and the intended use of the product does not carry weight in 35 U.S.C 102/103 rejection. Therefore, the use of the claimed polypeptide to detect lung cancer is irrelevant. Further, Chen does teach using a cancer marker protein to generate cytotoxic T cells against abnormal cells (p. 2, lines 8-16) or using the polypeptide as a vaccine (p. 19, first paragraph). Chen teaches an immunogenic composition comprising the claimed polypeptide in combination with a pharmaceutically acceptable adjuvant (p. 24). Since KOC-1 has amino acid sequence that is 100% identical to SEQ ID No. 176, it would have been obvious for one of ordinary skill at the time of the invetnion to use the claimed polypeptid in combination with a suitable adjuvant to either stimulate a Th1-type or Th2-type response. Applicants also argue that there is no motivation to combine the claimed polypeptide with a adjuvant to stimulate a Th1-type response and Chen teches away from the instant invention in that production of antibody is associated with a Th2-type response (amendment, p. 8, 9). This is not found persuasive because of the reasons of record and the reasons set forth above. It is unclear where in the Chen reference that teaches production of antibody associated with a Th2-type response, not Th1-type response. Aplicants argue that the claimed polypeptide is "self polypeptide" such that the claimed polypeptide would not be inherent to induce any type of immune response (amendment, p. 8). This is not found persuasive because of the reasons of record and the reasons set forth above. Examiner is confused as to what "self polypeptide" means and why a self polypeptide would not induce any type of immune response .